I do not think so for the reason that Aishah would have got her beneficial share of the estate as a widow in any case. In terms of section 10(1) of the Act her state of mind would not have made any difference to the validity of the distribution proceedings.

Thus stated it would seem clear to me that the main purpose of the action by the appellants was to get from the court a new distribution order as in relief No. (3) based on the declaration asked for in relief No. (2).

To achieve this purpose it was necessary to have the distribution order made by the Collector to be set aside. Viewed in this context I cannot help saying that the appellants were seeking to circumvent the Act, the clear object of which is to facilitate the distribution and administration of small estates and reduce costs normally involved in court proceedings. The objection on jurisdiction as was taken by the respondents should be upheld.

As to the jurisdiction of the court to make a distribution order in respect of small estates such as in this case it is to be observed that section 4(2) of the Act expressly states that the Collector shall have exclusive jurisdiction to deal with the distribution and administration of small estates. I think the word "exclusive" must mean that only the Collector shall have jurisdiction and no others. If that is correct I cannot see how relief No. (3) could be granted by the court. Before the Act the High Court in Kedah had jurisdiction to deal with estates exceeding $5,000/- in value by virtue of section 20 of the Kedah Administration of Estates Enactment No. 1. But the section had been repealed by section 32 of the Act making it abundantly clear that the intention of the Act was to take away the jurisdiction of the court in respect of small estates. I must point out, however, that this is true only of estates of persons who die intestate because section 5 of the Act expressly states that the jurisdiction of the High Court to grant probate shall not be affected.

Taking the view as I do of the provisions of the Act I am compelled to the conclusion that the appeal must fail. Accordingly the appeal is dismissed with costs, the appellants' deposit to go to the respondents against their taxed costs.

Wan Suleiman F.J. concurred.

Appeal dismissed.

Solicitors: *Oo Gin Sun, Bakar & Co.; R.C. Murugeson.*

GENERAL TRADING CORPORATION (M) SDN. BHD. v. OVERSEAS LUMBER BHD.

[F.C. (Gill Ag. L.P., Ali Ag. C.J. (Malaya) and Ong Hock Sim F.J.) October 29, 1976]

[Kuala Lumpur — Federal Court Civil Appeal No. 68 of 1976]

Practice and Procedure — Application to sign summary judgment — Claim on contract — Defence of alleged rescission, modification or variation of contract and want of consideration — Triable issues — R.S.C. 1957, O.14.

The appellants had applied for summary judgment against the respondents on a claim for breach of contract to supply timber. The respondents denied that they were in breach of contract and alleged rescission, modification or variation of the contract and also contended that the contracts were void for want of consideration. The Deputy Registrar dismissed the application holding that the respondents have a *bona fide* defence. An appeal to the High Court was dismissed and the appellants appealed to the Federal Court.

Held, dismissing the appeal: (1) the purpose of Order 14 is to enable a plaintiff to obtain summary judgment if he can prove his claim clearly;

(2) in this case in view of the defence allegations of rescission, modification and variation it could not be said that liability for breach of contract had been clearly established.

FEDERAL COURT.

Wong Chong Wah for the appellants.

S.Y. Woo for the respondents.

Ali Ag. C.J. (Malaya): This is an appeal from an order giving the respondents, Overseas Lumber Berhad, unconditional leave to defend the action in an application by the appellants, General Trading Corporation (M) Sdn. Bhd., for summary judgment under Order 14. The application was dismissed by the Deputy Registrar holding that the respondents have a *bona fide* defence. On appeal to the judge, Abdul Hamid J. dismissed the appeal saying that he agreed with the Deputy Registrar and that so far as it was a discretionary matter the Deputy Registrar had correctly exercised his discretion.

The claim by the appellants was for breach of contracts to supply timber. There were 14 contracts in all, each dated February 20, 1975. Under each of these contracts the respondents agreed to supply timber during certain specified period or periods. In some of the contracts the latest date on which delivery was to be made was the month of May. On the pleadings the appellants said that part of the timber under certain contracts were supplied but the balance was not. On August 21, they wrote to the respondents demanding the supply of the balance. On the respondents' failure to supply they issued a specially indorsed writ claiming $257,580 as loss and damages for breach of the contracts.

The respondents filed a defence in which they alleged rescission, modification or variation of the contracts by mutual consent or by fresh contracts. They also contended that the contracts were void for want of consideration. In any event, they denied that they were in breach of the contracts. On the ground that the appellants' pleadings did not disclose any cause of action they prayed for its dismissal.

The appellants in their affidavit verifying the cause of action stated the belief that there was no good

defence to the action and that its entry was merely for the purpose of delay.

Before I come to the defence it is necessary to state that the purpose of Order 14 is to enable a plaintiff to obtain summary judgment without trial if he can prove his claim clearly. See note to Order 14 under the heading "Judgment for Plaintiff" on page 243 of the Annual Practice 1958. I would emphasise on the word "clearly". The learned Deputy Registrar in this case had dismissed the appellants' application being of the view that there are triable issues which should go to trial. He said in his judgment that the amount of $257,580 claimed by the appellants as loss and damages had been arrived at merely by taking the total of the contract price and subtracting it from the total market value at the relevant time in respect of which he said there was no evidence. Taking into account the transport expenses which the appellants would have to incur he felt that the amount claimed could not represent the actual loss and damages. In other words loss and damages would have to be properly assessed and such assessment would have to be made at the trial of the action.

At the hearing of this appeal it was submitted that having taken the view as he did the learned Deputy Registrar must have been satisfied that on the pleadings and affidavit liability for breach of contracts has been established against the respondents and if that be so he should have entered judgment for the appellants with damages to be assessed.

This is an action for breach of contracts and not an action for negligence in which case it is possible to give a finding on liability if it is clear on the pleadings and affidavits that negligence cannot be disputed. It is in this context that the purpose of Order 14 was earlier stated emphasising as I did on the word "clearly". In this case in view of the defence allegation of rescission modification and variation it is impossible to be satisfied that liability for breach of contracts has clearly been established. In any case I cannot see how in an application under Order 14 interlocutory judgment with damages to be assessed can be made as though it is an application for such judgment under Order 13 which is concerned with a situation in which no appearance has been entered. Here it was not suggested that appearance had not been entered by the respondents who, as it seems to me, filed their defence less than a month after the writ was served.

In all the circumstances of this case I am of opinion that the learned Deputy Registrar was right in giving the respondents unconditional leave to defend and that the learned judge was also right in dismissing the appellants' appeal.

I would for the reasons stated above dismiss this appeal with costs.

Gill Ag. L.P. and **Ong Hock Sim F.J.** concurred.

Appeal dismissed.

Solicitors: *Skrine & Co.; K.C. Koh & Co.*

KOK WEE KIAT (MRS.) v. KUALA LUMPUR STOCK EXCHANGE BHD. & ORS.

[F.C. (Gill C.J., Ali and Wan Suleiman F.JJ.) November 13, 1976]

[Kuala Lumpur — Federal Court Civil Appeal No. 155 of 1975]

Practice and Procedure — Writ of summons — Generally indorsed — Claim for wrongful dismissal against first respondent — Claim for conspiracy to publish a defamatory statement and libel against the other respondents — Whether there is misjoinder — Trial judge ordering separate trial for claim for wrongful dismissal — Costs — R.S.C. 1957, O.18 r.1.

In this case the appellant had commenced action by a general writ of summons claiming as against the first respondent, damages for wrongful dismissal; and as against the other respondents, damages for conspiracy to publish a defamatory statement and libel. The first respondents applied by notice of motion that the appellant should elect whether to proceed with the action against the first respondents or against the other respondents. The learned trial judge directed that the distinct cause of action against the first respondents be tried first separately. He also ordered costs to be paid by the appellant. The appellant appealed.

Held; the trial judge has wide powers under Order 18 rule 1 of the Rules of the Supreme Court and was entitled to direct that the trial of the actions be conducted in a certain way but as he did not specifically find that the appellant was guilty of any misjoinder, she should not have been ordered to pay the costs. Costs should therefore follow the event.

Cases referred to:-

(1) *Sandes* v. *Wildsmith* [1893] 1 Q.B. 771, 774.

(2) *Citizen's Life Assurance* v. *Brown* [1904-7] All E.R. Rep. 295, P.C.

(3) *Frankenburg* v. *Great Horseless Carriage Company* [1900] 1 Q.B. 504.

(4) *Compania Sansinena De Carnes Congeladas* v. *Houlder Brothers & Co. Ltd. & Ors.* [1910] 2 K.B. 354.

HIGH COURT.

Wong Weng Kwai for the plaintiff.

Peter Mooney for the 1st defendant.

Eugene K.H. Lye for the 2nd, 3rd, 5th-8th defendants.

Ng Ek Teong (*Vincent Ponniah* with him) for the 9th defendant.

The judgment of the High Court was delivered on January 8, 1976:

Abdul Hamid J.: By Notice of Motion the Kuala Lumpur Stock Exchange Berhad, the first defendant, applied for an Order —

(1) That the plaintiff be required to elect within fourteen (14) days whether to proceed with the action against the first defendant or against the second, third fourth, fifth, sixth, seventh, eighth and ninth defendants;

(2) That if the plaintiff shall elect to proceed against the second to the ninth defendants that this defendant be struck out and that the Writ of Summons and Statement of Claim be amended accordingly;

(3) That if the plaintiff shall elect to proceed against the first defendant, the second, third, fourth, fifth, sixth, seventh, eighth and ninth defendants be struck out and that the Writ of Summons and Statement of Claim be amended accordingly; and

(4) That unless the plaintiff so elects within fourteen (14) days the Writ of Summons and all subsequent